

NOTICE OF LODGMENT
AUSTRALIAN COMPETITION TRIBUNAL

This document was lodged electronically in the AUSTRALIAN COMPETITION TRIBUNAL and has been accepted for lodgment pursuant to the Practice Direction dated 3 April 2019. Filing details follow and important additional information about these are set out below.

Lodgment and Details

Document Lodged: Statement

File Number: ACT 5 of 2021

File Title: RMSANZ APPLICATION FOR REVIEW OF AUTHORISATION
AA1000542 DETERMINATION MADE ON 21 SEPTEMBER 2021

Registry: VICTORIA – AUSTRALIAN COMPETITION TRIBUNAL



REGISTRAR

Dated: 26/07/2022 4:07 PM

Important information

This Notice has been inserted as the first page of the document which has been accepted for electronic filing. It is now taken to be part of that document for the purposes of the proceeding in the Tribunal and contains important information for all parties to that proceeding. It must be included in the document served on each of those parties.

Commonwealth of Australia
Competition and Consumer Act 2010 (Cth)



IN THE AUSTRALIAN COMPETITION TRIBUNAL

File No: ACT 4 of 2021
Re: Application for Review of Authorisation AA1000542
Determination made on 21 September 2021
Applicant: National Association of Practising Psychiatrists

AND

File No: ACT 5 of 2021
Re: Application for Review of Authorisation AA1000542
Determination made on 21 September 2021
Applicant: Rehabilitation Medicine Society of Australia and New Zealand Ltd

Statement

Statement of: Andrew Morrison Riordan
Address: Level 38, Olderfleet, 477 Collins Street, Melbourne, VIC 3000
Occupation: Solicitor
Date: 26 July 2022

Contents

| Document number | Details | Page |
|-----------------|--------------------------------------|-------|
| 1 | Statement of Andrew Morrison Riordan | 1-5 |
| 2 | Annexure AMR-1 | 6-36 |
| 3 | Annexure AMR-2 | 37-38 |
| 4 | Annexure AMR-3 | 39-41 |

Filed on behalf of (name & role of party) Australian Competition and Consumer Commission

Prepared by (name of person/lawyer) Andrew Riordan

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| Document number | Details | Page |
|-----------------|----------------|-------|
| 5 | Annexure AMR-4 | 42-45 |
| 6 | Annexure AMR-5 | 46-51 |
| 7 | Annexure AMR-6 | 52-57 |
| 8 | Annexure AMR-7 | 58-64 |
| 9 | Annexure AMR-8 | 65-72 |

I, **ANDREW MORRISON RIORDAN**, Level 38, Olderfleet, 477 Collins Street, Melbourne, VIC 3000, solicitor, make the following statement:

- 1 I am a Partner of Norton Rose Fulbright Australia (**NRFA**), the solicitor for the Australian Competition and Consumer Commission (**ACCC**). I am authorised to make this statement on the ACCC's behalf.
- 2 I make this statement from my own knowledge unless otherwise stated. Where statements are not made from my own knowledge, they are made to the best of my information and belief.
- 3 I am not authorised to waive any client legal privilege held by the ACCC. I do not by anything in this statement, intend to waive any privilege, and nothing in this statement should be construed as involving any waiver of privilege.

Communications and correspondence regarding settlement

- 4 On Thursday 7 July 2022, Gurukugan (Guru) Kuganathan, a Senior Associate in the team that I supervise at NRFA, received a telephone call from Adelaide Rosenthal of MinterEllison, the solicitors for the Authorisation Applicants. The effect of the call was to notify the ACCC that the parties to the proceedings had agreed in-principle terms of settlement and were preparing a settlement deed. It was purportedly contemplated that the deed would not impose obligations on the ACCC and the terms thereof would broadly reflect conditions set out in the Review Applicants' Statements of Facts, Issues and Contentions. Mr Kuganathan informed me of his discussion with Ms Rosenthal shortly after that call.

- 5 Later on that same day, I instructed Mr Kugananthan to call Ms Rosenthal. On that call, Mr Kugananthan sought to clarify whether it was intended that the ACCC would receive a draft version of the deed. Ms Rosenthal stated that she would need to seek instructions on that matter, but that it would seem to be an appropriate thing to do to ensure that the ACCC was across the details of the settlement. Further, Mr Kugananthan sought to determine likely timing of the provision of a copy of the deed to the ACCC, which Ms Rosenthal indicated would likely be the next day or early in the next week, beginning Monday 11 July 2022.
- 6 Later again on that same day, I instructed Ka Wing (Kelvin) Ng, an Associate in the team that I supervise at NRFA, to call Ms Rosenthal. Mr Ng requested a working draft of the deed as well as the final version, and for the parties to keep the ACCC in the loop. Ms Rosenthal told Mr Ng that the parties would need a more progressed draft in order to be comfortable providing it to the ACCC. Mr Ng then sought to clarify whether what was being envisaged was a discontinuance of the proceedings subject to leave being granted, which Ms Rosenthal confirmed. Mr Ng also enquired as to whether the parties had considered resolving the proceedings by way of a consent determination pursuant to s 101(1A) of the *Competition and Consumer Act 2010* (Cth). Ms Rosenthal confirmed that the parties had considered that course but had decided to proceed by way of a discontinuance. Mr Ng informed me of his discussions with Ms Rosenthal shortly after that call.
- 7 On Friday 8 July 2022, I instructed Mr Ng to call Ms Rosenthal. Mr Ng requested an update regarding the status of the draft settlement deed. Ms Rosenthal confirmed that the parties were still not in a position to provide a copy of the draft settlement deed and that the Review Applicants would not be available to speak with their solicitors until Tuesday 12 July 2022. Mr Ng informed me of his discussions with Ms Rosenthal shortly after that call.
- 8 On Tuesday 12 July 2022, I instructed Mr Ng to call Ms Rosenthal. Mr Ng informed me that he did not manage to get through to Ms Rosenthal, but left a voicemail message requesting a call back.
- 9 On Wednesday 13 July 2022, I instructed Mr Ng to call Ms Rosenthal. Mr Ng informed me that he unsuccessfully attempted to call Ms Rosenthal on two further occasions (once in the morning and once in the afternoon), leaving a further voicemail message requesting a call back on the second occasion.

- 10 On Thursday 14 July 2022, I unsuccessfully attempted to call Geoff Carter of MinterEllison, leaving a voicemail message requesting a call back. At the time of this statement, I have not received a response.
- 11 Later on that same day, I instructed Mr Ng to call Ms Rosenthal. Mr Ng requested an update regarding the status of the draft settlement deed. Ms Rosenthal informed Mr Ng that the draft settlement deed was well-advanced and the parties expected to be in a position to send a copy to the ACCC for input shortly, although it was not contemplated that the ACCC would be a party to the deed. Mr Ng informed me of his discussions with Ms Rosenthal shortly after that call.
- 12 On Friday 15 July 2022, Ms Rosenthal sent Mr Ng an email (on which I, amongst others, was copied) attaching what was described as a final execution version of the deed as agreed between the parties and indicated that it was the parties' intention at the time to exchange executed counterparts on Monday 18 July 2022. Now shown to me and marked **AMR-1** in the form annexed to this statement is a copy of that email and its attachment.
- 13 Later on that same day, I instructed Mr Ng to reply to Ms Rosenthal's email. In his email (on which I, amongst others, was copied), Mr Ng confirmed that the ACCC wished to arrange a call to discuss the deed prior to the parties proceeding with execution, noting that, having only just received a copy of the deed, the ACCC required some time to review and consider the terms thereof in order to make a decision regarding the position it would take. Now shown to me and marked **AMR-2** in the form annexed to this statement is a copy of that email.
- 14 Later again on that same day, Simon Uthmeyer of DLA Piper, the solicitors for the Authorisation Applicants, replied to Mr Ng's email (on which I, amongst others, was copied), requesting an explanation of the purpose of the call and the role the ACCC considered it may have in the resolution of the matter. Now shown to me and marked **AMR-3** in the form annexed to this statement is a copy of that email.
- 15 On Monday 18 July 2022, I responded to Mr Uthmeyer's email. In that email, I confirmed that the ACCC sees its role as being to assist the Tribunal, and that in fulfilling that role, the ACCC was considering whether it should object to leave being sought to withdraw the applications for review and discontinue the proceedings. Further, I noted that the matters the subject of the proceedings are not merely *inter partes* and involve a public interest element, having received numerous submissions from interested parties during the application process, as well as a number of interested parties having applied to intervene in the proceedings, such that questions of procedural fairness also arise, and

that as such, the ACCC wished to satisfy itself as to whether the deed was appropriate in all the circumstances – accordingly, the purpose of the call would be to discuss the appropriateness of the arrangements proposed with the parties. Now shown to me and marked **AMR-4** in the form annexed to this statement is a copy of that email.

- 16 Later on that same day, Ms Rosenthal replied to my email confirming convenient times for a call and intended attendees. Now shown to me and marked **AMR-5** in the form annexed to this statement is a copy of that email.
- 17 Later again on that same day, I instructed Mr Ng to reply to Ms Rosenthal's email. In his email (on which I, amongst others, was copied), Mr Ng confirmed that upon reflection, the ACCC considered that discussions could be progressed by way of written correspondence and anticipated being in a position to send through its preliminary comments in relation to the deed on the next day, Tuesday 19 July 2022. Now shown to me and marked **AMR-6** in the form annexed to this statement is a copy of that email.
- 18 After sending that email, Mr Ng received a call from Ms Rosenthal. Ms Rosenthal informed Mr Ng that the parties were already in the process of executing the deed and exchanging signed counterparts. Mr Ng stated to Ms Rosenthal that the ACCC had not appreciated that the parties would be executing the deed prior to the call that had previously been contemplated and requested that Ms Rosenthal inform him once all parties had exchanged signed counterparts of the deed, such that it would be fully executed. Mr Ng informed me of his discussions with Ms Rosenthal shortly after that call.
- 19 Following that conversation, Ms Rosenthal sent Mr Ng an email (on which I, amongst others, was copied) indicating that MinterEllison would be available for a call to discuss the deed on Tuesday 19 July 2022. Now shown to me and marked **AMR-7** in the form annexed to this statement is a copy of that email.
- 20 On Tuesday 19 July 2022, Mr Kuganathan received a telephone call from Ms Rosenthal. On that call, Ms Rosenthal informed Mr Kuganathan that the parties had executed their respective counterparts of the deed, although not all the counterparts, including the Authorisation Applicants', had been exchanged as yet. Mr Kuganathan informed me of his discussions with Ms Rosenthal shortly after that call.
- 21 Later on that same day, I instructed Mr Ng to reply to Ms Rosenthal's email. In his email (on which I, amongst others, was copied), Mr Ng confirmed his understanding that most if not all of the parties had already executed counterparts of the Deed, and in light of that, the ACCC did not propose to raise issues with the content of the Deed. Further, Mr Ng confirmed that the ACCC did not propose to object to leave to withdraw being

granted, although it proposed to write to the Tribunal once the application for leave to withdraw had been made to raise some issues that the Tribunal may wish to consider in relation to that question, further details of which would be provided in due course. Now shown to me and marked **AMR-8** in the form annexed to this statement is a copy of that email.

Numbers of submissions and submitters

- 22 The ACCC received 498 separate submissions before determining to grant the authorisation the subject of these proceedings.
- 23 Based on analysis of those 498 submissions that I instructed Mr Ng to undertake, I understand that those submissions were made by approximately 442 separate parties, 45 of which were organisations and 397 of which were individuals (noting that some submissions were joint submissions on behalf of multiple individuals and some submissions were from individuals affiliated with organisations, including as officeholders). In addition, also based on that analysis, I understand that the majority of those submissions opposed the conduct being authorised.

Made
at Melbourne
in Victoria
on 26 July 2022

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)
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Signature

Kelvin Ng

From: Adelaide Rosenthal <Adelaide.Rosenthal@minterellison.com>
Sent: Friday, 15 July 2022 2:54 PM
To: Kelvin Ng
Cc: Andrew Riordan; Guru Kuganathan; Simon Uthmeyer; Joely Wilkinson-Hayes; Georgina Adams; Daniel Preston; Nick Kotzman; Geoff Carter; Noelia Boscana; Alix Friedman
Subject: ACT 4 and 5 of 2021 - Re Authorisation AA1000542 Determination - settlement deed [ME-ME.FID6495601] (4046201)[NRF-APAC.FID3010067]
Attachments: 20220715 Deed of settlement (final).DOCX
Categories: Filed

[External Email – Use Caution]

Dear Kelvin

Further to our recent discussions, please find attached a final execution version of the Deed as agreed between the Applicants, Authorisation Applicants and Intervenor in the review proceedings.

This Deed is confidential and is provided to the ACCC pursuant to clause 7.1(e) of the Deed.

We note it is presently the parties' intention to exchange executed counterparts on Monday.

Please let us know if you wish to discuss any aspect of the Deed further before then and we can arrange a call.

Regards
Adelaide

Adelaide Rosenthal

Senior Associate

T +61 3 8608 2995

adelaide.rosenthal@minterellison.com

MinterEllison Collins Arch 447 Collins Street Melbourne VIC 3000

minterellison.com [Follow us on LinkedIn and Twitter](#)



IMPORTANT INFORMATION, PLEASE READ

MinterEllison respectfully acknowledges the Traditional Custodians on whose lands we live, work and learn. We offer our respects to Elders past and present.

VACCINATED WORKPLACE

MinterEllison is committed to keeping our people and communities safe and preventing the spread of COVID-19 and its variants. Our offices are fully vaccinated workplaces. Only fully vaccinated partners and staff, clients, suppliers, contractors and visitors can meet and work at our offices.

[Read more for access procedures.](#)

OTHER MATTERS

This email, including any attachments, is confidential and may be legally privileged (and neither is waived or lost by mistaken delivery). Please notify us if you have received this email in error and promptly delete it from your system. Any unauthorised use of this email is expressly prohibited. Our liability in connection with this email (including due to viruses in any attachments) is limited to re-supplying this email and its attachments. We collect personal information to provide and market our services and for other purposes - please refer to our privacy policy for more information on how we collect and handle personal information.

Sensitive: Legal



Date: July 2022

Deed of Settlement and Release

nib Health Funds Ltd (**nib**)

Honeysuckle Health Pty Ltd (**HH**)

National Association of Practising Psychiatrists
Incorporated (ABN 22 076 781 854) (**NAPP**)

Rehabilitation Medicine Society of Australia and New
Zealand LTD (ABN 83 604 341 559) (**RMSANZ**)

Australian Medical Association Limited (ABN 37 008
426 793) (**AMA**)

Level 20 Collins Arch 447 Collins Street
Melbourne Vic 3000 Australia DX 204 Melbourne
T +61 3 8608 2000 F +61 3 8608 1000
minterellison.com

MinterEllison

Deed of settlement

| | |
|--|-----------|
| Details | 3 |
| Agreed terms | 5 |
| 1. Defined terms & interpretation | 5 |
| 2. No admissions | 7 |
| 3. Withdrawal from proceeding | 7 |
| 3.1 Proceeding to be discontinued | 7 |
| 3.2 Application to withdraw | 7 |
| 4. Conditions of settlement | 7 |
| 4.1 Application of the conditions of settlement | 7 |
| 4.2 Continuation of a medical gap scheme | 8 |
| 4.3 Conditions attaching to the BCPP and other agreements with medical specialists | 8 |
| 4.4 Monitoring of compliance with above conditions | 10 |
| 5. Dispute resolution | 10 |
| 5.1 No court proceeding unless procedure followed | 10 |
| 5.2 Notice of Dispute | 10 |
| 5.3 Negotiations | 10 |
| 5.4 Referral to mediation | 10 |
| 5.5 Mediation | 10 |
| 5.6 Release if other party breaches | 11 |
| 5.7 Obligations continue | 11 |
| 6. Absolute bar | 11 |
| 7. Confidentiality | 11 |
| 7.1 Confidentiality | 11 |
| 7.2 Form of press release to members | 11 |
| 7.3 Non-disparagement | 11 |
| 8. Costs | 12 |
| 9. Acknowledgements | 12 |
| 10. Further assurances | 12 |
| 11. Governing law | 12 |
| 12. Entire agreement | 13 |
| 13. Severability | 13 |
| 14. Counterparts | 13 |

15. Signing Authority

13

Signing page

14

Details

Date July 2022

Parties

Name/s nib Health Funds Ltd
Honeysuckle Health Pty Ltd
Short form name **Authorisation Applicants**
Notice details c/- Geoff Carter, MinterEllison, Level 20, 447 Collins Street, Melbourne VIC 3000

Name/s Rehabilitation Medicine Society of Australia and New Zealand
National Association of Practising Psychiatrists
Short form name **Review Applicants**
Notice details c/- Simon Uthmeyer, DLA Piper, 80 Collins Street, Melbourne VIC 3000

Name/s Australian Medical Association Limited (ABN 37 008 426 793)
Short form name **Intervenor**
Notice details Georgina Adams, Level 1, 39 Brisbane Avenue, Barton ACT 2600

Background

- A nib is a major private health insurer (**PHI**) which supplies private health insurance policies to Australian and New Zealand residents.
- B HH is a health services and data science company appointed by nib to provide various services including contract negotiation and drafting in respect of nib's contracts and arrangements with hospitals, medical specialists and other healthcare providers (**Providers**).
- C HH has worked with nib to, among other things:
 - (i) administer nib's MediGap scheme (nib's version of the medical gap scheme);
 - (ii) implement the Broad Clinical Partners Program (**BCPP**) which involves nib entering into medical purchaser provider agreements with medical specialists to provide a "no gap" experience to nib customers for a single course of treatment involving multiple medical specialists. Presently, the BCPP is confined to hip and knee joint replacement surgery in NSW and QLD but there are plans to expand this program.

Application and ACCC determination

- D On 24 December 2020, the Authorisation Applicants jointly applied for authorisation from the ACCC under s 88(1) of the *Competition and Consumer Act 2010* (Cth) for HH to form a joint buying group (the **HH Buying Group**) and provide contracting and related services to PHIs and other healthcare payers (**Application**). The Application was amended three times during the authorisation process —on 8 April 2021, 21 April 2021 and on 6 May 2021 — for the purpose of responding to issues raised during that process.
- E The contracting services HH proposes to offer to healthcare payers that join the HH Buying Group include:
 - (i) contracting negotiations and drafting;
 - (ii) data analytics;
 - (iii) contract administration and management;
 - (iv) dispute resolution services (in relation to contractual arrangements);
 - (v) management of customer complaints; and
 - (vi) performance and compliance assessment (reporting and oversight of parties' adherence to terms and conditions of contractual arrangements).
- F The contracting services are to be provided to Participants in relation to hospital purchaser provider agreements with private hospitals, medical purchaser provider agreements with medical specialists, medical gap schemes and general treatment networks. Most relevantly, it is proposed that HH would offer Participants of the HH Buying Group the ability to access (on an opt in basis):
 - (i) HH's own medical gap scheme (which would be derived from nib's MediGap Scheme); and
 - (ii) the BCPP.
- G On 21 September 2021, the ACCC issued its Final Determination, authorising:
 - (i) the formation and operation of the HH Buying Group, including the BCPP, involving the provision of services to Authorised Entities;
 - (ii) the acquisition of contracting services by Authorised Entities from HH.(together, the **Proposed Conduct**)
- H The ACCC authorised the Proposed Conduct for a period of five years effective on and from 13 October 2021 (i.e. until 13 October 2026) (the **Authorised Period**) (**Authorisation**).

Review applications

- I On 8 October 2021, the Review Applicants filed separate applications seeking review of the Final Determination (**Review Applications**) before the Australian Competition Tribunal (with identifiers ACT 4 of 2021 and ACT 5 of 2021) (**Review Proceedings**).
- J The Parties have agreed to resolve the Review Proceedings on the terms set out in this Deed without any admission of liability by any Party.

Agreed terms

1. Defined terms & interpretation

In this Deed unless the contrary intention appears:

- (a) headings are for ease of reference only and do not affect the meaning of this Deed;
- (b) the singular includes the plural and vice versa;
- (c) other grammatical forms of defined words or expressions have corresponding meanings;
- (d) where there are two or more persons bound or to be bound an agreement or obligation binds those persons severally and any two or more of them jointly;
- (e) a reference to a Party includes that Party's executors, administrators, successors and permitted assigns;
- (f) a reference to a document or Deed, including this Deed, includes a reference to that document or Deed as novated, altered or replaced from time to time;
- (g) a reference to any thing includes the whole or part of that thing and a reference to a group of things or persons includes each thing or person in that group;
- (h) a reference to dollars or \$ is a reference to Australian dollars;
- (i) words and expressions importing natural persons include partnerships, bodies corporate, associations and public authorities;
- (j) **ACCC** means the Australian Competition and Consumer Commission;
- (k) **Additional Patient Data** means data other than data of the kind currently collected by PHIs pursuant to medical gap schemes for the purposes of verifying claims and meeting regulatory requirements;
- (l) **Application** has the same meaning given to it in the Background section of this Deed and includes the amendments made to the Application on 8 April and 6 May 2021;
- (m) **Authorisation** has the meaning given to it in the Background section of this Deed;
- (n) **Authorised Entities** has the same meaning attributed by the ACCC in its Final Determination which includes:
 - (i) HH and nib;
 - (ii) PHIs except for the Major PHIs;
 - (iii) international medical and travel insurance companies;
 - (iv) government and semi-government payers of healthcare services such as workers' compensation and transport accident scheme operators, and the Department of Veterans Affairs scheme; and

- (v) any other payer of health services or goods other than a Major PHI, as notified by HH to the ACCC;
- (o) **Authorised Period** has the same meaning given to it in the Background section of this Deed;
- (p) **BCPP** has the same meaning given to it in the Background section of this Deed;
- (q) **Business Day** means a day that is not a Saturday, Sunday, bank holiday or public holiday in Victoria, Australia;
- (r) **Dispute** means a dispute arising of this Deed, and specifically a dispute as to whether a party has complied with its obligations pursuant to this Deed.
- (s) **Final Determination** means the ACCC's determination of the Application dated 21 September 2021 (bearing the ACCC document number 12730326.1);
- (t) **HH Buying Group** has the same meaning given to it in the Background section of this Deed;
- (u) **Independent medical specialist body** means a specialist medical college recognised by the Australian Medical Council Limited or a professional association or peak body acting on behalf of, representing the interests of, and advocating for the rights of, medical specialists;
- (v) **Major PHI** has the same meaning given to it in the Final Determination;
- (w) **Medical gap scheme** means a scheme pursuant to which:
 - (i) PHIs offer to pay medical specialists a set fee higher than the Medicare Benefits Schedule Fee for each type of professional service they provide a PHI customer in hospital in accordance with a standard set of terms and conditions; and
 - (ii) medical specialists agree not to charge the PHI customer an out-of-pocket amount or agree to limit the amount the PHI customer is charged at a fixed amount;
- (x) **Medicare Benefits Schedule** means the schedule set by the Commonwealth Government for the purpose of paying Medicare benefits;
- (y) **Medicare Benefits Schedule Fee** means the amount set under the Medicare Benefits Schedule for each medical service;
- (z) **Participants** means Authorised Entities that join the HH Buying Group;
- (aa) **Parties** means the parties described in the Details section of this Deed;
- (bb) **PHI** means a private health insurer registered under the *Private Health Insurance (Prudential Supervision) Act 2015 (Cth)*;
- (cc) **Proposed Conduct** has the same meaning given to it in the Background section of this Deed;
- (dd) **Providers** has the same meaning given to it in the Background section of this Deed;
- (ee) **Review Applications** has the same meaning given to it in the Background section of this Deed;
- (ff) **Quality Assurance Activities** means:
 - (i) the collection and/or sharing of data, including clinical data, clinical registry information, patient-reported outcome measures (PROMs) and patient-reported experience measures (PREMs) for the purposes of benchmarking and reporting either to Participants in the HH Buying Group (on an aggregate basis only) or to individual practitioners to evaluate and improve the quality of health services; and

- (ii) other quality assurance activities,
that are in accordance with generally accepted medical practice for the relevant speciality or sub-speciality but does not include publication of identifiable data in relation to individual medical practitioners or patients without their express consent.
- (gg) **Review Proceedings** has the same meaning given to it in the Background section of this Deed;
- (hh) **Related Parties** means the Party's employees and agents and, if a corporation, its associates (as defined in the *Corporations Act 2001* (Cth));
- (ii) **Targets** means a set goal or objective or performance indicator, measured in numerical or percentage terms for treatment or outcomes for patients of medical specialists (e.g. that a medical specialist refer a maximum percentage of their patients to overnight inpatient rehabilitation or refer a minimum percentage to at home treatment); and
- (jj) **Tribunal** means the Australian Competition Tribunal.

2. No admissions

The contents of this Deed do not constitute an admission or concession by any Party as to any fact or matter.

3. Withdrawal from proceeding

3.1 Proceeding to be discontinued

The Parties agree to resolve the Review Proceedings on the terms set out in this Deed and consent to the Tribunal granting leave to withdraw the Review Applications and the Review Proceedings being discontinued.

3.2 Application to withdraw

Within 24 hours of the executed counterparts of this Deed being exchanged by all Parties the Review Applicants' solicitors must file an application seeking leave from the Tribunal to withdraw their Review Applications and noting that the Authorisation Applicants and Intervenor do not object to the Tribunal granting leave to withdraw the Review Applications and discontinuing the Review Proceedings.

4. Conditions of settlement

4.1 Application of the conditions of settlement

- (a) In exchange for the Review Applicants obtaining leave from the Tribunal to withdraw their Review Applications and withdrawing their Review Applications, and the Intervenor consenting to this withdrawal, the Authorisation Applicants agree to the conditions prescribed in this clause 4.
- (b) For the avoidance of doubt, unless specifically stated, the conditions contained in clause 4 only apply to the collective activities of the HH Buying Group for the Authorised Period. Nothing in this clause is intended to limit:
 - (i) the activities nib is permitted to engage in, in its individual capacity;
 - (ii) the services that HH is permitted to provide to a PHI on an individual basis; or
 - (iii) the activities of nib, HH or the HH Buying Group beyond the Authorised Period.

4.2 Continuation of a medical gap scheme

Without limiting the restrictions in the Final Determination (particularly the restrictions related to Major PHIs), nib or HH must maintain, and HH must make available to all Participants of the HH Buying Group, a medical gap scheme which must:

- (a) offer medical specialists fees that, as a percentage of the Medical Benefits Schedule Fee, are at least as high as the percentage offered to medical specialists by the nib MediGap scheme as at 1 March 2022;
- (b) otherwise offer medical specialists terms and conditions at least as favourable as the terms and conditions offered to medical specialists by the nib MediGap scheme as at 1 March 2022 unless the term or condition is consistent with general industry terms and conditions for medical gap schemes;
- (c) not require medical specialists to provide Additional Patient Data;
- (d) not require medical specialists to:
 - (i) discharge patients to home treatment;
 - (ii) refer patients to particular specialists or specialists from a particular group (such as preferred or contracted specialists);
 - (iii) refer patients to particular allied health services or allied health services from a particular group (such as preferred or contracted services);
 - (iv) treat patients at particular facilities or facilities in a particular group (such as preferred or contracted facilities);
- (e) not vary the fees paid to medical specialists based on whether or not nib or HH has a contract with the facility;
- (f) not include Targets or any right to terminate or not renew a contract with a medical specialist for any failure to meet Targets;
- (g) apart from the published fees being paid under the medical gap scheme, not include any additional incentive (whether financial or otherwise) for performance or patient outcomes;
- (h) allow medical specialists to opt out of the medical gap scheme for individual patients; and
- (i) not be confidential.

4.3 Conditions attaching to the BCPP and other agreements with medical specialists

Without limiting the restrictions in the Final Determination (particularly the restrictions related to Major PHIs), the HH Buying Group must only offer:

- (a) the BCPP; and
- (b) any other alternative agreement with medical specialists that do not meet all the criteria in clause 4.2,

to Participants if those agreements:

- (c) do not require medical specialists to have regard to any clinical or treatment guidelines other than those developed or approved by an independent medical specialist body that is relevant to that area of medical specialisation or sub-specialisation;
- (d) expressly acknowledge that any such clinical or treatment guidelines must be interpreted and applied independently by the medical specialist with regard to the individual circumstances and best interests of patients;
- (e) expressly acknowledge the right of medical practitioners to exercise clinical independence at all times in relation to the provision of medical services;

- (f) expressly acknowledge that the HH or the Participant will not interfere with the clinical independence of the medical specialist;
- (g) in relation to any obligation to collect and disclose Additional Patient Data, expressly acknowledge that:
 - (i) medical specialists must obtain informed consent to the collection and disclosure of Additional Patient Data to the Participant and HH;
 - (ii) a patient can decline to provide consent for the collection and disclosure of Additional Patient Data to the Participant and HH;
 - (iii) if a patient declines to provide Additional Patient Data, no attempt should be made by HH or PHIs or third parties to contact patients to enter into alternate data collection arrangements outside the specialist-patient relationship;
 - (iv) a patient may not have the capacity to consent to the collection and disclosure of Additional Patient Data to the Participant and HH;
 - (v) medical specialists are otherwise not obliged to collect or disclose Additional Patient Data to the Participant and HH where in the medical specialist's reasonable opinion, the collection and disclosure of such data is not in their patient's best interests;
 - (vi) medical specialists will not be penalised for not collecting and disclosing Additional Patient Data in the circumstances described in subparagraphs (ii) to (v) above, where 'penalising' means terminating or deciding not to renew a contract with a medical specialist or otherwise treating a medical specialist less favourably (including by discouraging referrals to them).
- (h) do not require a medical specialist to do any of the following if, in the medical specialist's reasonable independent assessment, this would not be in the best interests of the patient:
 - (i) apply clinical or treatment guidelines;
 - (ii) discharge the patient to home treatment;
 - (iii) refer the patient to particular medical specialists or medical specialists from a particular group (such as preferred or contracted medical specialists); or
 - (iv) refer the patient to particular allied health providers or allied health services from a particular group (such as preferred or contracted services);
- (i) do not impose financial penalties on a medical specialist if they do not do any of the things specified in subparagraph (h) above;
- (j) do not restrict a medical specialist from disclosing the existence of the agreement and its terms (other than prices whether in dollar amounts or percentages of Medicare Benefits Schedule Fee) to:
 - (i) a patient;
 - (ii) the AMA or other relevant professional body; or
 - (iii) the medical specialists' professional advisors including suppliers of medical indemnity insurance;
- (k) do not include Targets or any right to terminate or not renew a contract with a medical specialist for any failure to meet Targets; and
- (l) apart from:
 - (i) the fees being paid for provision of medical services to the patient; and
 - (ii) payments for participation in, and facilitation of, Quality Assurance Activities,

not include any incentive (whether financial or otherwise) for performance or patient outcomes.

4.4 Monitoring of compliance with above conditions

- (a) Each party must, until the expiry of the Authorised Period, keep true and particular records to reasonably evidence its compliance with the terms of this Deed.
- (b) Upon reasonable request by the Review Applicants or Intervenor to the Authorisation Applicants, the Authorisation Applicants must, within 14 Business Days (or such longer period as agreed between the Authorisation Applicants and the Party making the request), provide the Review Applicants or Intervenor with information or records described in clause 4.4(a) **Error! Reference source not found.** within the Authorisation Applicants' possession or control to the extent that they are relevant to, and are reasonably necessary for, the verification of the Authorisation Applicants' compliance with their obligations under this Deed.
- (c) The Review Applicants and Intervenor are limited to making a request under 4.4(b) once each in a six month period.

5. Dispute resolution

5.1 No court proceeding unless procedure followed

A party must not start court proceedings unless it has complied with this clause 5.

5.2 Notice of Dispute

A party claiming that a Dispute has arisen must give the other relevant party notice of the Dispute and provide all known details about the circumstances giving rise to the Dispute within 5 Business Days of notification.

5.3 Negotiations

The parties must attempt to resolve any Dispute by negotiation using the following escalation procedure:

- (a) each of the parties' representatives will meet within fourteen Business Days after the giving of the notice under clause 5.2 to attempt to resolve the Dispute through negotiations; and
- (b) if the representatives cannot resolve a Dispute within ten Business Days after the referral to them under paragraph (a), each party must refer the Dispute to an appropriate senior representative who must attempt to resolve the Dispute through negotiations.

5.4 Referral to mediation

If the parties' senior representatives cannot resolve the Dispute under clause 5.3(b) within 20 Business Days (or such longer period as agreed between them) after the Dispute is referred to them, then the parties must refer the Dispute to mediation under clause 5.5.

5.5 Mediation

If a Dispute is referred to mediation under clause 5.4, the mediation will be conducted in accordance with the Australian Disputes Centre's Guidelines for Commercial Mediation 2019 in force on the date when the request for mediation was submitted, unless the parties agree otherwise in writing.

5.6 Release if other party breaches

If a party breaches this clause 5 in relation to a Dispute, the other party need not comply with this clause 5 in relation to that Dispute.

5.7 Obligations continue

The parties must continue to perform their respective obligations under this Deed pending the resolution of a Dispute.

6. Absolute bar

This Deed may be pleaded and tendered by any Party as an absolute bar and defence to any proceeding brought in breach of the terms of this Deed.

7. Confidentiality

7.1 Confidentiality

The terms of this Deed are confidential. A Party must not disclose or permit to be disclosed either directly or indirectly the subject matter or terms of this Deed or details of any discussions or negotiations between the Parties in relation to this Deed except:

- (a) in a statement to their respective members which substantially complies with clause 7.2 or as agreed by HH;
- (b) with the express written consent of each other Party;
- (c) to the extent required by law;
- (d) to the extent disclosure is necessary to obtain leave of the Tribunal to withdraw the Review Applications and/or to discontinue the Review Proceedings;
- (e) to the extent disclosure is necessary to obtain the ACCC's consent, or non-opposition, to the withdrawal of the Review Applications and/or discontinuance of the Review Proceedings;
- (f) on a confidential basis to their insurers (if any) or professional advisers or their Related Parties;
- (g) in the case of breach of any of the terms of this Deed; or
- (h) for the purpose of making a claim against any other person.

7.2 Form of statement to members

See Appendices A, B and C (Form of Statement to AMA Members, Form of Statement by NAPP to members, Form of Statement by RMSANZ to members and summary of agreed conditions attaching to each).

7.3 Non-disparagement

Subject to the disclosures permitted by clause 7.1 and 7.2:

- (a) the Authorisation Applicants agree that they will not say or write anything, or procure the saying or writing of anything, to discredit or criticise the Review Applicants or the Intervenor in any way and by any means regarding the issues being settled by this Deed;
- (b) the Review Applicants agree that they will not say or write anything, or procure the saying or writing of anything, to discredit or criticise the Authorisation Applicants in any way and by any means regarding the issues being settled by this Deed;

- (c) the Intervenor agrees that they will not say or write anything, or procure the saying or writing of anything, to discredit or criticise the Authorisation Applicants in any way and by any means regarding the issues being settled by this Deed.

For the avoidance of doubt, in the event that the Authorisation Applicants apply to the ACCC to renew the Authorisation, this section will not preclude the Review Applicants or Intervenor from:

- (d) advocating on behalf of their members:
 - (i) in relation to policy issues more generally (for example, the efficacy of value based healthcare in Australia);
 - (ii) in relation to future proposals or decisions made by the Authorisation Applicants including without limitation the implementation and operation of the BCPP.
- (e) making submissions to the ACCC about the issues being settled by this Deed;
- (f) issuing communications to their respective members about the issues being settled by this Deed.

8. Costs

Each Party shall bear their own costs arising out of:

- (a) the Application;
- (b) the Review Applications;
- (c) the Review Proceedings; and
- (d) the negotiation, preparation and execution of this Deed.

9. Acknowledgements

Each Party acknowledges and agrees that:

- (a) in entering into this Deed, it has not relied on any representations or warranties about its subject matter except as expressly set out in this Deed; and
- (b) the Party enters into this Deed voluntarily based on their own information, investigation and legal advice.

10. Further assurances

Each Party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this Deed and any transaction, arrangement or outcome contemplated by it.

11. Governing law

This Deed is governed by the laws of Victoria and each Party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of Victoria.

12. Entire agreement

This Deed embodies the entire agreement between the Parties to this Deed in respect of the subject matter of the Deed, and supersedes any prior negotiations, understandings, representations or warranties with respect to the subject matter of this Deed

13. Severability

Part or all of any provision of this Deed that is illegal or unenforceable may be severed from this Deed and the remaining provisions of this Deed continue in force.

14. Counterparts

This Deed may be executed in any number of counterparts and all counterparts taken together will constitute one instrument. The Parties agree that counterparts may be exchanged by electronically signed pdf copies.

15. Signing Authority

Each person signing this Deed as an authorised officer, agent or attorney of any Party, by doing so, warrants to the other Parties that, as at the date of signing, he or she has full authority to execute the Deed on behalf of that Party and has obtained all necessary consents and approvals, which have not been revoked.

Signing page

EXECUTED as a deed

By signing below, each director or secretary (as applicable) consents to electronic execution of this document (in whole or in part), represents that they hold the position or are the person named with respect to their execution and authorises any other director or secretary to produce a copy of this document bearing his or her signature for the purpose of signing the copy to complete its execution under section 127 of the Corporations Act. The copy of the signature appearing on the copy so executed is to be treated as his or her original signature.

Executed by nib Health Funds Ltd in accordance with Section 127 of the Corporations Act 2001

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Date of signature:

Executed by Honeysuckle Health Pty Ltd in accordance with Section 127 of the Corporations Act 2001

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Date of signature:

Executed by National Association of Practising Psychiatrists Incorporated

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Executed by Rehabilitation Medicine Society of Australia and New Zealand LTD in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Executed by Australian Medical Association Limited (ABN 37 008 426 793) in accordance with Section 127 of the *Corporations Act 2001*

Signature of director

Signature of director/company secretary
(Please delete as applicable)

Name of director (print)

Name of director/company secretary (print)

Appendix A – Form of statement by AMA to members

EDM Subject line:

STRONGER PROTECTION FOR PATIENTS AND DOCTORS SECURED IN ADDITIONAL CONDITIONS ON MEDICAL BUYING GROUP ARRANGEMENTS

Dear << Test Salutation >> << Test Last Name >>

I'm writing to let you know about the outcome of protracted negotiations with buying group Honeysuckle Health (HH) and nib health funds to secure stronger protection for clinical autonomy and patient care.

Last year the Australian Competition and Consumer Commission (ACCC) authorised HH to collectively negotiate and administer contracts with healthcare providers (including hospitals, medical specialists and allied health professionals) on behalf of participants in its buying group.

The AMA and other medical groups provided multiple submissions to the ACCC. The ACCC granted authorisation subject to a condition that major private health insurers be excluded from participation in the buying group and that the period of authorisation be limited to five years, rather than the requested ten years.

The Rehabilitation Medicine Society of Australia and New Zealand (RMSANZ) and National Association of Practising Psychiatrists (NAPP) filed review applications with the Australian Competition Tribunal over concerns at how the ACCC's decision would impact on rehabilitation and psychiatric services.

Earlier this year, the AMA successfully applied to formally intervene in these review proceedings. This has been a large endeavour for Federal Secretariat and the AMA more broadly.

We engaged external counsel and an external economist and I also lodged a detailed witness statement recognising many of the concerns of our psychiatry and rehabilitation colleagues. The AMA was particularly concerned about the potential for doctors to be economically coerced into signing agreements that contain targets.

I am pleased to tell you that a legally binding agreement has been reached with Honeysuckle Health which reinforces strong protections for doctors and patients for specialist services funded by private health insurers who choose to participate in the HH buying group.

These protections are in addition to the conditions already put in place by the ACCC. This means that the authorisation will continue to be limited to five years and will continue to exclude the major health funds.

The additional conditions agreed by nib and HH are set out in summary in the Attachment. nib and HH must keep records of their compliance with these conditions and AMA, NAPP and RMSANZ can each play an ongoing role in ensuring compliance.

We are pleased to see that Honeysuckle Health has listened to the concerns of doctors. During our discussions, HH emphasised their desire to work with doctors to innovate in the delivery of

health care and we believe this settlement will support that cooperation without putting patient care and clinician choice at risk.

When the ACCC handed down its authorisation decision last year, it focused largely on competition issues. The additional conditions agreed with HH focus on the clinical aspects of a patient's care and the critical importance of preserving patient and clinician choice.

Whilst Honeysuckle Health has throughout the process emphasised that buying group activities will not (and cannot legally) interfere with the clinical autonomy of doctors and their decisions about patient care, the AMA has worked hard to ensure that this commitment is enshrined in a legally binding deed.. The additional conditions agreed with Honeysuckle Health ensure that patients are protected and decisions about the care of patients remain in the hands of patients and their doctors.

The settlement includes many important protections. For example, doctors who do not wish to participate in Broad Clinical Partners Program (BCPP) or other new programs developed by HH will retain access to a medical gap scheme that will keep in step with the MBS Schedule.

Honeysuckle Health has also undertaken to retain many of the existing features of the nib medical gap scheme, including the ability to opt out for individual patients.

Where a doctor chooses to participate in BCPP or another program developed by HH, rules will be in place to ensure additional data is collected with genuine patient consent.

Honeysuckle Health has also acknowledged that, while clinical guidelines are important in guiding decision making, they need to be developed by independent specialist medical bodies and may not be applicable in all cases. In all cases, doctors must have the clinical autonomy to act in the best interests of the patient.

HH also recognised the importance of transparency. The settlement gives specialists broad rights to disclose the terms (other than prices) of BCPP and other agreements to their patients, the AMA or other relevant professional bodies and their Medical Defence Organisations or other professional advisers.

The AMA will be happy to assist any members who have concerns over any agreements they have, or are discussing with, the Honeysuckle health buying group.

The AMA has been at great pains - and I must say, great expense - to secure these protections for you, our members, as well as our specialty colleagues.

We look forward to working constructively with Honeysuckle Health throughout the next four years to ensure doctors continue to have a strong voice in this process.

Yours sincerely

Dr Omar Khorshid
President

Attachment – Summary of agreed conditions

All agreed conditions specifically relate to the Honeysuckle Health buying group activities. These conditions do not limit:

- the activities nib is permitted to engage in, in its individual capacity;
- the services that Honeysuckle Health (**HH**) is permitted to provide to a PHI on an individual basis; or
- the activities of nib, HH or the HH buying group beyond 13 October 2026.

1. Continuation of the medical gap scheme

Agreement was reached that nib or HH would continue to offer a viable medical gap scheme to participants of the Honeysuckle Health buying group with the following assurances:

- Safeguards to ensure the relative value of fees (by percentage of MBS fee) are maintained.
- Safeguard to ensure terms and conditions remain as favourable as those currently offered by the nib MediGap scheme unless the term or condition is consistent with general industry practice.
- No obligation to provide any data to HH or nib beyond that required to verify claims.
- No requirement for medical specialists to:
 - discharge patients to home care;
 - refer patients to particular specialists or specialists from a particular group;
 - refer patients to particular allied health services;
 - treat patients at particular facilities or facilities in a particular group.
- No targets or any right to terminate based on failure to meet targets.
- No incentives (financial or otherwise) for performance or patient outcomes apart from the existing fees payable.
- Continued right of specialists to opt out of the medical gap scheme for individual patients.
- No confidentiality requirements.

2. BCPP and other agreements with medical specialists

Agreement was reached that HH will only offer the BCPP and any other agreement to participants of the buying group if the agreement has the following protections:

- No requirement that medical specialists have regard to any clinical guidelines beyond those developed by an recognised specialist body.
- Agreements will expressly acknowledge:
 - that the application of clinical guidelines must be done with regard to the best interests of patients;
 - the clinical independence of participating medical specialists;
 - that there will be no interference in the clinical independence of the medical specialist.

- Consent must be obtained from the patient to collect and disclose patient data beyond that required to verify claims and additional protections for medical specialists that choose not to disclose this data.
- A medical specialist cannot be required to do any of the following (and cannot be financially penalised if they do not do any of the following) if in their view it is not in the best interests of the patient:
 - apply clinical or treatment guidelines;
 - discharge the patient to home treatment;
 - refer the patient to particular medical specialists or allied health providers.
- Medical specialists can disclose agreements and their terms (aside from terms relating to pricing) to patients, AMA and their insurers.
- No targets or any right to terminate based on failure to meet targets.
- No incentives provided to medical specialists beyond payments for participation in, and facilitation of quality assurance activities.

3. Compliance monitoring

The parties have also reached agreement on a reasonable audit procedure as well as a dispute resolution procedure for an alleged breach of the terms of the deed. This will help to ensure ongoing compliance.

Appendix B – Form of statement by NAPP to members

National Association of Practising Psychiatrists (NAPP)

STRONGER PROTECTION FOR PATIENTS AND DOCTORS SECURED IN ADDITIONAL CONDITIONS ON MEDICAL BUYING GROUP ARRANGEMENTS

Dear << Test Salutation >> << Test Last Name >>

I'm writing to let you know about the outcome of protracted negotiations with buying group Honeysuckle Health (HH) – a joint venture between Cigna, a USA health insurer, and nib, an Australian private health insurer) and nib health funds to secure stronger protection for clinical autonomy and patient care.

Last year the Australian Competition and Consumer Commission (ACCC) authorised HH to collectively negotiate and administer contracts with healthcare providers (including hospitals, medical specialists and allied health professionals) on behalf of participants in its buying group.

NAPP, the Rehabilitation Medicine Society of Australia and New Zealand (RMSANZ), the Australian Medical Association (AMA) and other medical groups provided multiple submissions to the ACCC. The ACCC granted authorisation subject to a condition that major private health insurers be excluded from participation in the buying group and that the period of authorisation be limited to five years, rather than the requested ten years.

NAPP and RMSANZ filed review applications with the Australian Competition Tribunal over concerns at how the ACCC's decision would impact on rehabilitation and psychiatric services. Earlier this year, the AMA successfully applied to formally intervene in these review proceedings.

NAPP and RMSANZ were represented by pro bono barristers and solicitors in the proceedings. We are very grateful for their generous efforts on our behalf.

We submitted witness statements and legal submissions outlining our concerns about the potential for doctors to be economically coerced into signing agreements that contain targets, health insurer determined clinical guidelines, and demands for patient and provider information and data that would have intruded into independent clinical decision-making. The AMA engaged external counsel and an external economist to provide support for these concerns. We are very thankful for the assistance of the AMA.

I am pleased to tell you that a legally binding agreement has been reached with Honeysuckle Health, which reinforces strong protections for doctors and patients for specialist services, funded by private health insurers who choose to participate in the HH buying group. This agreement maintains strong protections for psychiatrists who do not wish to participate in the HH buying group's BCPP program to continue to be able to use no-gap contracts.

These protections are in addition to the conditions already put in place by the ACCC. This means that the authorisation will continue to be limited to five years and will continue to exclude the major health funds.

The additional conditions agreed by nib and HH are set out in summary in the Attachment. nib and HH must keep records of their compliance with these conditions and the AMA, NAPP and RMSANZ can each play an ongoing role in ensuring compliance.

We are pleased to see that Honeysuckle Health has listened to the concerns of doctors. During our discussions, HH emphasised their desire to work with doctors to innovate in the delivery of health care. We believe this settlement will support that cooperation without putting patient care and clinician autonomy at risk.

When the ACCC handed down its authorisation decision last year, it focused largely on competition issues. The additional conditions agreed with HH focus on the clinical aspects of a patient's care and the critical importance of preserving the doctor-patient relationship and preserving patient and clinician collaborative choices.

Whilst Honeysuckle Health has throughout the process emphasised that buying group activities will not (and cannot legally) interfere with the clinical autonomy of doctors and their decisions about patient care, we have worked hard to ensure that this commitment is enshrined in a legally binding deed. The additional conditions agreed with Honeysuckle Health ensure that patients are protected and decisions about the care of patients remain in the hands of patients and their doctors.

The settlement includes many important protections. For example, doctors who do not wish to participate in Broad Clinical Partners Program (BCPP) contracts or other new schemes developed by HH will retain access to a medical gap scheme that will keep in step with the MBS Schedule.

Honeysuckle Health has also undertaken to retain many of the existing features of the nib medical gap scheme, including the ability to opt out for individual patients.

Where a doctor chooses to participate in BCPP or another scheme developed by HH, rules will be in place to ensure additional data is collected with genuine patient consent.

Honeysuckle Health has also acknowledged that, while clinical guidelines are important in guiding decision making, they need to be developed by independent specialist medical bodies and are unlikely to be applicable in the same way for individual patients. Psychiatrists must always have the clinical independence to act in the best interests of the patient.

Transparency is protected. The settlement gives psychiatrists broad rights to disclose the terms (other than prices) of BCPP and other agreements to their patients, NAPP, RMSANZ, the AMA or other relevant professional bodies and their Medical Defence Organisations or other professional advisers.

NAPP, RMSANZ, and the AMA will be happy to assist any members who have concerns over any agreements they have, or are discussing with, the Honeysuckle health buying group.

NAPP has been at great pains to secure these protections for you, our members, our patients, and our psychiatric and specialty colleagues.

We look forward to working constructively with Honeysuckle Health throughout the next four years to ensure doctors continue to have a strong voice in this process.

| July 2022 |

Yours sincerely,

Prof Philip Morris AM
President NAPP

Attachment – Summary of agreed conditions

All agreed conditions specifically relate to the Honeysuckle Health buying group activities. These conditions do not limit:

- the activities nib is permitted to engage in, in its individual capacity;
- the services that Honeysuckle Health (**HH**) is permitted to provide to a PHI on an individual basis; or
- the activities of nib, HH or the HH buying group beyond 13 October 2026.

1. Continuation of the medical gap scheme

Agreement was reached that nib or HH would continue to offer a viable medical gap scheme to participants of the Honeysuckle Health buying group with the following assurances:

- Safeguards to ensure the relative value of fees (by percentage of MBS fee) are maintained.
- Safeguard to ensure terms and conditions remain as favourable as those currently offered by the nib MediGap scheme unless the term or condition is consistent with general industry practice.
- No obligation to provide any data to HH or nib beyond that required to verify claims.
- No requirement for medical specialists to:
 - discharge patients to home care;
 - refer patients to particular specialists or specialists from a particular group;
 - refer patients to particular allied health services;
 - treat patients at particular facilities or facilities in a particular group.
- No targets or any right to terminate based on failure to meet targets.
- No incentives (financial or otherwise) for performance or patient outcomes apart from the existing fees payable.
- Continued right of specialists to opt out of the medical gap scheme for individual patients.
- No confidentiality requirements.

2. BCPP and other agreements with medical specialists

Agreement was reached that HH will only offer the BCPP and any other agreement to participants of the buying group if the agreement has the following protections:

- No requirement that medical specialists have regard to any clinical guidelines beyond those developed by a recognised specialist body.
- Agreements will expressly acknowledge:
 - that the application of clinical guidelines must be considered with regard to the best interests of patients;
 - the clinical independence of participating medical specialists;
 - that there will be no interference in the clinical independence of the medical specialist.

- Consent must be obtained from the patient to collect and disclose patient data beyond that required currently to verify claims and additional protections for medical specialists that choose not to disclose this data.
- A medical specialist cannot be required to do any of the following (and cannot be financially penalised if they do not do any of the following) if in their view it is not in the best interests of the patient:
 - apply clinical or treatment guidelines;
 - discharge the patient to home treatment;
 - refer the patient to particular medical specialists or allied health providers.
- Medical specialists can disclose agreements and their terms (aside from terms relating to pricing) to patients, professional advisors, colleagues and professional bodies, the AMA, and their insurers.
- No targets or any right to terminate based on failure to meet targets.
- No incentives provided to medical specialists beyond payments for participation in, and facilitation of quality assurance activities.

3. Compliance monitoring

The parties have also reached agreement on a reasonable audit procedure as well as a dispute resolution procedure for an alleged breach of the terms of the deed. This will help to ensure ongoing compliance.

Appendix C – Form of statement by RMSANZ to members

Rehabilitation Medicine Society of Australia and New Zealand

STRONGER PROTECTION FOR PATIENTS AND DOCTORS SECURED IN ADDITIONAL CONDITIONS ON MEDICAL BUYING GROUP ARRANGEMENTS

Dear << Test Salutation >> << Test Last Name >>

I'm writing to let you know about the outcome of protracted negotiations with buying group Honeysuckle Health (HH) – a joint venture between Cigna, a USA health insurer, and nib, an Australian private health insurer) and nib health funds to secure stronger protection for clinical autonomy and patient care.

Last year the Australian Competition and Consumer Commission (ACCC) authorised HH to collectively negotiate and administer contracts with healthcare providers (including hospitals, medical specialists and allied health professionals) on behalf of participants in its buying group.

RMSANZ, the National Association of Practising Psychiatrists (NAPP) the Australian Medical Association (AMA) and other medical groups provided multiple submissions to the ACCC. The ACCC granted authorisation subject to a condition that major private health insurers be excluded from participation in the buying group and that the period of authorisation be limited to five years, rather than the requested ten years.

RMSANZ and NAPP filed review applications with the Australian Competition Tribunal over concerns at how the ACCC's decision would impact on rehabilitation and psychiatric services. Earlier this year, the AMA successfully applied to formally intervene in these review proceedings.

RMSANZ and NAPP were represented by pro bono barristers and solicitors in the proceedings. We are very grateful for their generous efforts on our behalf.

We submitted witness statements and legal submissions outlining our concerns about the potential for doctors to be economically coerced into signing agreements that contain targets, health insurer determined clinical guidelines, and demands for patient and provider information and data that would have intruded into independent clinical decision-making. The AMA engaged external counsel and an external economist to provide support for these concerns. We are very thankful for the assistance of the AMA.

I am pleased to tell you that a legally binding agreement has been reached with Honeysuckle Health, which reinforces strong protections for doctors and patients for specialist services, funded by private health insurers who choose to participate in the HH buying group. This agreement maintains strong protections for rehabilitation physicians who do not wish to participate in the HH buying group's BCPP program to continue to be able to use no-gap contracts.

These protections are in addition to the conditions already put in place by the ACCC. This means that the authorisation will continue to be limited to five years and will continue to exclude the major health funds.

The additional conditions agreed by nib and HH are set out in summary in the Attachment. nib and HH must keep records of their compliance with these conditions and the AMA, RMSANZ and NAPP can each play an ongoing role in ensuring compliance.

We are pleased to see that Honeysuckle Health has listened to the concerns of doctors. During our discussions, HH emphasised their desire to work with doctors to innovate in the delivery of health care. We believe this settlement will support that cooperation without putting patient care and clinician autonomy at risk.

When the ACCC handed down its authorisation decision last year, it focused largely on competition issues. The additional conditions agreed with HH focus on the clinical aspects of a patient's care and the critical importance of preserving the doctor-patient relationship and preserving patient and clinician collaborative choices.

Whilst Honeysuckle Health has throughout the process emphasised that buying group activities will not (and cannot legally) interfere with the clinical autonomy of doctors and their decisions about patient care, we have worked hard to ensure that this commitment is enshrined in a legally binding deed. The additional conditions agreed with Honeysuckle Health ensure that patients are protected and decisions about the care of patients remain in the hands of patients and their doctors.

The settlement includes many important protections. For example, doctors who do not wish to participate in Broad Clinical Partners Program (BCPP) contracts or other new schemes developed by HH will retain access to a medical gap scheme that will keep in step with the MBS Schedule.

Honeysuckle Health has also undertaken to retain many of the existing features of the nib medical gap scheme, including the ability to opt out for individual patients.

Where a doctor chooses to participate in BCPP or another scheme developed by HH, rules will be in place to ensure additional data is collected with genuine patient consent.

Honeysuckle Health has also acknowledged that, while clinical guidelines are important in guiding decision making, they need to be developed by independent specialist medical bodies and are unlikely to be applicable in the same way for individual patients. Rehabilitation physicians must always have the clinical independence to act in the best interests of the patient.

Transparency is protected. The settlement gives rehabilitation physicians broad rights to disclose the terms (other than prices) of BCPP and other agreements to their patients, RMSANZ, NAPP, the AMA or other relevant professional bodies and their Medical Defence Organisations or other professional advisers.

RMSANZ, NAPP and the AMA will be happy to assist any members who have concerns over any agreements they have, or are discussing with, the Honeysuckle health buying group.

RMSANZ has been at great pains to secure these protections for you, our members, our patients, and our rehabilitation medicine and specialty colleagues.

We look forward to working constructively with Honeysuckle Health throughout the next four years to ensure doctors continue to have a strong voice in this process.

| July 2022 |

Yours sincerely,

Dr Zoe Adey-Wakeling
President RMSANZ

Attachment – Summary of agreed conditions

All agreed conditions specifically relate to the Honeysuckle Health buying group activities. These conditions do not limit:

- the activities nib is permitted to engage in, in its individual capacity;
- the services that Honeysuckle Health (**HH**) is permitted to provide to a PHI on an individual basis; or
- the activities of nib, HH or the HH buying group beyond 13 October 2026.

1. Continuation of the medical gap scheme

Agreement was reached that nib or HH would continue to offer a viable medical gap scheme to participants of the Honeysuckle Health buying group with the following assurances:

- Safeguards to ensure the relative value of fees (by percentage of MBS fee) are maintained.
- Safeguard to ensure terms and conditions remain as favourable as those currently offered by the nib MediGap scheme unless the term or condition is consistent with general industry practice.
- No obligation to provide any data to HH or nib beyond that required to verify claims.
- No requirement for medical specialists to:
 - discharge patients to home care;
 - refer patients to particular specialists or specialists from a particular group;
 - refer patients to particular allied health services;
 - treat patients at particular facilities or facilities in a particular group.
- No targets or any right to terminate based on failure to meet targets.
- No incentives (financial or otherwise) for performance or patient outcomes apart from the existing fees payable.
- Continued right of specialists to opt out of the medical gap scheme for individual patients.
- No confidentiality requirements.

2. BCPP and other agreements with medical specialists

Agreement was reached that HH will only offer the BCPP and any other agreement to participants of the buying group if the agreement has the following protections:

- No requirement that medical specialists have regard to any clinical guidelines beyond those developed by a recognised specialist body.
- Agreements will expressly acknowledge:
 - that the application of clinical guidelines must be considered with regard to the best interests of patients;
 - the clinical independence of participating medical specialists;
 - that there will be no interference in the clinical independence of the medical specialist.

- Consent must be obtained from the patient to collect and disclose patient data beyond that required currently to verify claims and additional protections for medical specialists that choose not to disclose this data.
- A medical specialist cannot be required to do any of the following (and cannot be financially penalised if they do not do any of the following) if in their view it is not in the best interests of the patient:
 - apply clinical or treatment guidelines;
 - discharge the patient to home treatment;
 - refer the patient to particular medical specialists or allied health providers.
- Medical specialists can disclose agreements and their terms (aside from terms relating to pricing) to patients, professional advisors, colleagues and professional bodies, the AMA, and their insurers.
- No targets or any right to terminate based on failure to meet targets.
- No incentives provided to medical specialists beyond payments for participation in, and facilitation of quality assurance activities.

3. Compliance monitoring

The parties have also reached agreement on a reasonable audit procedure as well as a dispute resolution procedure for an alleged breach of the terms of the deed. This will help to ensure ongoing compliance.

Kelvin Ng

From: Kelvin Ng
Sent: Friday, 15 July 2022 4:10 PM
To: Adelaide Rosenthal
Cc: Andrew Riordan; Guru Kuganathan; Simon Uthmeyer; Joely Wilkinson-Hayes; Georgina Adams; Daniel Preston; Nick Kotzman; Geoff Carter; Noelia Boscana; Alix Friedman
Subject: RE: ACT 4 and 5 of 2021 - Re Authorisation AA1000542 Determination - settlement deed [ME-ME.FID6495601] (4046201)[NRF-APAC.FID3010064]

Categories: Filed

Dear Adelaide,

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Please let us know what dates and times would suit for a call early next week (from Monday afternoon onwards) and confirm the representatives of the parties who are intended to be in attendance.

Regards,

Kelvin Ng | Associate
Norton Rose Fulbright Australia
Level 38, Olderfleet, 477 Collins Street, Melbourne, Australia
Tel +61 3 8686 6309 | Mob +61 428 081 084 | Fax +61 3 8686 6505
kelvin.ng@nortonrosefulbright.com

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From: Adelaide Rosenthal <Adelaide.Rosenthal@minterellison.com>
Sent: Friday, 15 July 2022 2:54 PM
To: Kelvin Ng <kelvin.ng@nortonrosefulbright.com>
Cc: Andrew Riordan <andrew.riordan@nortonrosefulbright.com>; Guru Kuganathan <guru.kuganathan@nortonrosefulbright.com>; Simon Uthmeyer <Simon.Uthmeyer@dlapiper.com>; Joely Wilkinson-Hayes <Joely.Wilkinson-Hayes@dlapiper.com>; Georgina Adams <gadams@ama.com.au>; Daniel Preston <daniel.preston@vicbar.com.au>; Nick Kotzman <nick.kotzman@vicbar.com.au>; Geoff Carter <Geoff.Carter@minterellison.com>; Noelia Boscana <Noelia.Boscana@minterellison.com>; Alix Friedman <Alix.Friedman@minterellison.com>
Subject: ACT 4 and 5 of 2021 - Re Authorisation AA1000542 Determination - settlement deed [ME-ME.FID6495601] (4046201)[NRF-APAC.FID3010067]

[External Email – Use Caution]

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Senior Associate

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Sensitive: Legal

Kelvin Ng

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Sent: Friday, 15 July 2022 5:23 PM
To: Kelvin Ng; Adelaide Rosenthal
Cc: Andrew Riordan; Guru Kuganathan; Joely Wilkinson-Hayes; Georgina Adams; Daniel Preston; Nick Kotzman; Geoff Carter; Noelia Boscana; Alix Friedman
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Kelvin Ng

From: Andrew Riordan
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To: Simon Uthmeyer; Adelaide Rosenthal
Cc: Guru Kuganathan; Joely Wilkinson-Hayes; Georgina Adams; Daniel Preston; Nick Kotzman; Geoff Carter; Noelia Boscana; Alix Friedman; Kelvin Ng
Subject: RE: ACT 4 and 5 of 2021 - Re Authorisation AA1000542 Determination - settlement deed [ME-ME.FID6495601] (4046201)[NRF-APAC.FID3010064]

Categories: Filed

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Kelvin Ng

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Sent: Monday, 18 July 2022 9:48 AM
To: Andrew Riordan; Simon Uthmeyer
Cc: Guru Kugananthan; Joely Wilkinson-Hayes; Georgina Adams; Daniel Preston; Nick Kotzman; Geoff Carter; Noelia Boscana; Alix Friedman; Kelvin Ng
Subject: RE: ACT 4 and 5 of 2021 - Re Authorisation AA1000542 Determination - settlement deed (4046201)[NRF-APAC.FID3010064] [ME-ME.FID6495601]

Categories: Filed

We are available to attend a call after 3:30pm today or 11:30am tomorrow. At this stage, myself and Noelia will be attending.

Adelaide Rosenthal

Senior Associate

T +61 3 8608 2995

adelaide.rosenthal@minterellison.com

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Kelvin Ng

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To: Adelaide Rosenthal
Cc: Andrew Riordan; Guru Kuganathan; Simon Uthmeyer; Joely Wilkinson-Hayes; Georgina Adams; Daniel Preston; Nick Kotzman; Geoff Carter; Noelia Boscana; Alix Friedman
Subject: RE: ACT 4 and 5 of 2021 - Re Authorisation AA1000542 Determination - settlement deed (4046201)[NRF-APAC.FID3010064] [ME-ME.FID6495601]

Categories: Filed

Dear Adelaide,

Thank you for your email.

Upon reflection, the ACCC considers that discussions can be progressed by way of written correspondence and anticipates being in a position to send through its preliminary comments in relation to the Deed tomorrow.

Regards,

Kelvin Ng | Associate
Norton Rose Fulbright Australia
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kelvin.ng@nortonrosefulbright.com

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Sent: Monday, 18 July 2022 9:48 AM
To: Andrew Riordan <andrew.riordan@nortonrosefulbright.com>; Simon Uthmeyer <Simon.Uthmeyer@dlapiper.com>
Cc: Guru Kuganathan <guru.kuganathan@nortonrosefulbright.com>; Joely Wilkinson-Hayes <Joely.Wilkinson-Hayes@dlapiper.com>; Georgina Adams <gadams@ama.com.au>; Daniel Preston <daniel.preston@vicbar.com.au>; Nick Kotzman <nick.kotzman@vicbar.com.au>; Geoff Carter <Geoff.Carter@minterellison.com>; Noelia Boscana <Noelia.Boscana@minterellison.com>; Alix Friedman <Alix.Friedman@minterellison.com>; Kelvin Ng <kelvin.ng@nortonrosefulbright.com>
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We are available to attend a call after 3:30pm today or 11:30am tomorrow. At this stage, myself and Noelia will be attending.

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Senior Associate
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adelaide.rosenthal@minterellison.com

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Subject: RE: ACT 4 and 5 of 2021 - Re Authorisation AA1000542 Determination - settlement deed [ME-ME.FID6495601] (4046201)[NRF-APAC.FID3010064]

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Regards

Andrew Riordan | Partner
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Subject: RE: ACT 4 and 5 of 2021 - Re Authorisation AA1000542 Determination - settlement deed [ME-ME.FID6495601] (4046201)[NRF-APAC.FID3010064]

****EXTERNAL****

Dear Adelaide,

The ACCC confirms that it would like to arrange a call to discuss the Deed prior to the parties proceeding with execution.

Having only just received a copy of the Deed, the ACCC requires some time to review and consider the terms thereof in order to make a decision regarding the position it will take.

Please let us know what dates and times would suit for a call early next week (from Monday afternoon onwards) and confirm the representatives of the parties who are intended to be in attendance.

Regards,

Kelvin Ng | Associate
Norton Rose Fulbright Australia
Level 38, Olderfleet, 477 Collins Street, Melbourne, Australia
Tel +61 3 8686 6309 | Mob +61 428 081 084 | Fax +61 3 8686 6505
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From: Adelaide Rosenthal <Adelaide.Rosenthal@minterellison.com>

Sent: Friday, 15 July 2022 2:54 PM

To: Kelvin Ng <kelvin.ng@nortonrosefulbright.com>

Cc: Andrew Riordan <andrew.riordan@nortonrosefulbright.com>; Guru Kugananthan <guru.kugananthan@nortonrosefulbright.com>; Simon Uthmeyer <Simon.Uthmeyer@dlapiper.com>; Joely Wilkinson-Hayes <Joely.Wilkinson-Hayes@dlapiper.com>; Georgina Adams <gadams@ama.com.au>; Daniel Preston <daniel.preston@vicbar.com.au>; Nick Kotzman <nick.kotzman@vicbar.com.au>; Geoff Carter <Geoff.Carter@minterellison.com>; Noelia Boscana <Noelia.Boscana@minterellison.com>; Alix Friedman <Alix.Friedman@minterellison.com>

Subject: ACT 4 and 5 of 2021 - Re Authorisation AA1000542 Determination - settlement deed [ME-ME.FID6495601] (4046201)[NRF-APAC.FID3010067]

[External Email – Use Caution]

Dear Kelvin

Further to our recent discussions, please find attached a final execution version of the Deed as agreed between the Applicants, Authorisation Applicants and Intervenor in the review proceedings.

This Deed is confidential and is provided to the ACCC pursuant to clause 7.1(e) of the Deed.

We note it is presently the parties' intention to exchange executed counterparts on Monday.

Please let us know if you wish to discuss any aspect of the Deed further before then and we can arrange a call.

Regards
Adelaide

Adelaide Rosenthal

Senior Associate

T +61 3 8608 2995

adelaide.rosenthal@minterellison.com

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Sent: Monday, 18 July 2022 6:03 PM
To: Kelvin Ng; Andrew Riordan; Guru Kugananthan; Geoff Carter; Noelia Boscana; Alix Friedman; Simon Uthmeyer; Joely Wilkinson-Hayes; Daniel Preston; Georgina Adams; Nick Kotzman
Subject: RE: ACT 4 and 5 of 2021 - Re Authorisation AA1000542 Determination - settlement deed (4046201)[NRF-APAC.FID3010064] [ME-ME.FID6495601]
Categories: Filed

Thanks Kelvin.

As raised below and discussed on our call just now, myself and the Minters team can make ourselves available tomorrow to talk through the deed.

Regards
Adelaide

Adelaide Rosenthal

Senior Associate
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****EXTERNAL****

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Having only just received a copy of the Deed, the ACCC requires some time to review and consider the terms thereof in order to make a decision regarding the position it will take.

Please let us know what dates and times would suit for a call early next week (from Monday afternoon onwards) and confirm the representatives of the parties who are intended to be in attendance.

Regards,

Kelvin Ng | Associate
Norton Rose Fulbright Australia
Level 38, Olderfleet, 477 Collins Street, Melbourne, Australia
Tel +61 3 8686 6309 | Mob +61 428 081 084 | Fax +61 3 8686 6505
kelvin.ng@nortonrosefulbright.com

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From: Adelaide Rosenthal <Adelaide.Rosenthal@minterellison.com>
Sent: Friday, 15 July 2022 2:54 PM
To: Kelvin Ng <kelvin.ng@nortonrosefulbright.com>
Cc: Andrew Riordan <andrew.riordan@nortonrosefulbright.com>; Guru Kugananthan <guru.kugananthan@nortonrosefulbright.com>; Simon Uthmeyer <Simon.Uthmeyer@dlapiper.com>; Joely Wilkinson-Hayes <Joely.Wilkinson-Hayes@dlapiper.com>; Georgina Adams <gadams@ama.com.au>; Daniel Preston <daniel.preston@vicbar.com.au>; Nick Kotzman <nick.kotzman@vicbar.com.au>; Geoff Carter <Geoff.Carter@minterellison.com>; Noelia Boscana <Noelia.Boscana@minterellison.com>; Alix Friedman <Alix.Friedman@minterellison.com>
Subject: ACT 4 and 5 of 2021 - Re Authorisation AA1000542 Determination - settlement deed [ME-ME.FID6495601] (4046201)[NRF-APAC.FID3010067]

[External Email – Use Caution]

Dear Kelvin

Further to our recent discussions, please find attached a final execution version of the Deed as agreed between the Applicants, Authorisation Applicants and Intervenor in the review proceedings.

This Deed is confidential and is provided to the ACCC pursuant to clause 7.1(e) of the Deed.

We note it is presently the parties' intention to exchange executed counterparts on Monday.

Please let us know if you wish to discuss any aspect of the Deed further before then and we can arrange a call.

Regards
Adelaide

Adelaide Rosenthal

Senior Associate

T +61 3 8608 2995

adelaide.rosenthal@minterellison.com

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Kelvin Ng

From: Kelvin Ng
Sent: Tuesday, 19 July 2022 12:55 PM
To: 'Adelaide Rosenthal'
Cc: Geoff Carter; Noelia Boscana; Alix Friedman; Simon Uthmeyer; Joely Wilkinson-Hayes; Daniel Preston; Nick Kotzman; Georgina Adams; Andrew Riordan; Guru Kuganathan
Subject: RE: ACT 4 and 5 of 2021 - Re Authorisation AA1000542 Determination - settlement deed (4046201)[NRF-APAC.FID3010064] [ME-ME.FID6495601]
Categories: Filed

Dear Adelaide,

Further to our calls with you, we understand that most if not all of the parties have already executed counterparts of the Deed. In light of that, the ACCC does not propose to raise issues with the content of the Deed.

Further, the ACCC does not propose to object to leave to withdraw being granted. That said, the ACCC proposes to write to the Tribunal once the application for leave to withdraw has been made to raise some issues that the Tribunal may wish to consider in relation to that question. We will provide further details regarding those issues in due course.

Regards,

Kelvin Ng | Associate
Norton Rose Fulbright Australia
Level 38, Olderfleet, 477 Collins Street, Melbourne, Australia
Tel +61 3 8686 6309 | Mob +61 428 081 084 | Fax +61 3 8686 6505
kelvin.ng@nortonrosefulbright.com

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Sent: Monday, 18 July 2022 6:03 PM
To: Kelvin Ng <kelvin.ng@nortonrosefulbright.com>; Andrew Riordan <andrew.riordan@nortonrosefulbright.com>; Guru Kuganathan <guru.kuganathan@nortonrosefulbright.com>; Geoff Carter <Geoff.Carter@minterellison.com>; Noelia Boscana <Noelia.Boscana@minterellison.com>; Alix Friedman <Alix.Friedman@minterellison.com>; Simon Uthmeyer <Simon.Uthmeyer@dlapiper.com>; Joely Wilkinson-Hayes <Joely.Wilkinson-Hayes@dlapiper.com>; Daniel Preston <daniel.preston@vicbar.com.au>; Georgina Adams <gadams@ama.com.au>; Nick Kotzman <nick.kotzman@vicbar.com.au>
Subject: RE: ACT 4 and 5 of 2021 - Re Authorisation AA1000542 Determination - settlement deed (4046201)[NRF-APAC.FID3010063] [ME-ME.FID6495601]

Thanks Kelvin.

As raised below and discussed on our call just now, myself and the Minters team can make ourselves available tomorrow to talk through the deed.

Regards
Adelaide

Adelaide Rosenthal

Senior Associate

T +61 3 8608 2995

adelaide.rosenthal@minterellison.com

MinterEllison Collins Arch 447 Collins Street Melbourne VIC 3000

minterellison.com [Follow us on LinkedIn and Twitter](#)

From: Kelvin Ng <kelvin.ng@nortonrosefulbright.com>

Sent: Monday 18 July 2022 05:38 PM

To: Adelaide Rosenthal <Adelaide.Rosenthal@minterellison.com>

Cc: Andrew Riordan <andrew.riordan@nortonrosefulbright.com>; Guru Kugananthan

<guru.kugananthan@nortonrosefulbright.com>; Simon Uthmeyer <Simon.Uthmeyer@dlapiper.com>; Joely Wilkinson-

Hayes <Joely.Wilkinson-Hayes@dlapiper.com>; Georgina Adams <gadams@ama.com.au>; Daniel Preston

<daniel.preston@vicbar.com.au>; Nick Kotzman <nick.kotzman@vicbar.com.au>; Geoff Carter

<Geoff.Carter@minterellison.com>; Noelia Boscana <Noelia.Boscana@minterellison.com>; Alix Friedman

<Alix.Friedman@minterellison.com>

Subject: RE: ACT 4 and 5 of 2021 - Re Authorisation AA1000542 Determination - settlement deed (4046201)[NRF-APAC.FID3010064] [ME-ME.FID6495601]

Dear Adelaide,

Thank you for your email.

Upon reflection, the ACCC considers that discussions can be progressed by way of written correspondence and anticipates being in a position to send through its preliminary comments in relation to the Deed tomorrow.

Regards,

Kelvin Ng | Associate

Norton Rose Fulbright Australia

Level 38, Olderfleet, 477 Collins Street, Melbourne, Australia

Tel +61 3 8686 6309 | Mob +61 428 081 084 | Fax +61 3 8686 6505

kelvin.ng@nortonrosefulbright.com

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From: Adelaide Rosenthal <Adelaide.Rosenthal@minterellison.com>

Sent: Monday, 18 July 2022 9:48 AM

To: Andrew Riordan <andrew.riordan@nortonrosefulbright.com>; Simon Uthmeyer <Simon.Uthmeyer@dlapiper.com>

Cc: Guru Kugananthan <guru.kugananthan@nortonrosefulbright.com>; Joely Wilkinson-

Hayes <Joely.Wilkinson-Hayes@dlapiper.com>; Georgina Adams <gadams@ama.com.au>; Daniel Preston <daniel.preston@vicbar.com.au>;

Nick Kotzman <nick.kotzman@vicbar.com.au>; Geoff Carter <Geoff.Carter@minterellison.com>; Noelia Boscana

<Noelia.Boscana@minterellison.com>; Alix Friedman <Alix.Friedman@minterellison.com>; Kelvin Ng

<kelvin.ng@nortonrosefulbright.com>

Subject: RE: ACT 4 and 5 of 2021 - Re Authorisation AA1000542 Determination - settlement deed (4046201)[NRF-APAC.FID3010063] [ME-ME.FID6495601]

We are available to attend a call after 3:30pm today or 11:30am tomorrow. At this stage, myself and Noelia will be attending.

Adelaide Rosenthal

Senior Associate

T +61 3 8608 2995

adelaide.rosenthal@minterellison.com

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From: Andrew Riordan <andrew.riordan@nortonrosefulbright.com>

Sent: Monday 18 July 2022 09:40 AM

To: Simon Uthmeyer <Simon.Uthmeyer@dlapiper.com>; Adelaide Rosenthal <Adelaide.Rosenthal@minterellison.com>

Cc: Guru Kuganathan <guru.kuganathan@nortonrosefulbright.com>; Joely Wilkinson-Hayes <Joely.Wilkinson-Hayes@dlapiper.com>; Georgina Adams <gadams@ama.com.au>; Daniel Preston <daniel.preston@vicbar.com.au>;

Nick Kotzman <nick.kotzman@vicbar.com.au>; Geoff Carter <Geoff.Carter@minterellison.com>; Noelia Boscana

<Noelia.Boscana@minterellison.com>; Alix Friedman <Alix.Friedman@minterellison.com>; Kelvin Ng

<kelvin.ng@nortonrosefulbright.com>

Subject: RE: ACT 4 and 5 of 2021 - Re Authorisation AA1000542 Determination - settlement deed [ME-ME.FID6495601] (4046201)[NRF-APAC.FID3010064]

Dear Simon,

The ACCC sees its role as being to assist the Tribunal. In fulfilling that role, the ACCC is considering whether it should object to leave being sought to withdraw the Review Applications and discontinue the Review Proceedings.

The ACCC notes that the matters the subject of the Review Proceedings are not merely inter partes and involve a public interest element, having received numerous submissions from interested parties during the application process, as well as a number of interested parties having applied to intervene in the Review Proceedings, such that questions of procedural fairness also arise. As such, the ACCC wishes to satisfy itself as to whether the Deed is appropriate in all the circumstances.

As such, the purpose of the call would be to discuss the appropriateness of the arrangements currently proposed with the parties.

Please let us know if you have any further questions.

Regards

Andrew Riordan | Partner

Norton Rose Fulbright Australia

Level 38, Olderfleet, 477 Collins Street, Melbourne, Australia

Tel +61 3 8686 6680 | Mob +61 410 257 854 | Fax +61 3 8686 6505

andrew.riordan@nortonrosefulbright.com

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Sent: Friday, 15 July 2022 5:23 PM
To: Kelvin Ng <kelvin.ng@nortonrosefulbright.com>; Adelaide Rosenthal <Adelaide.Rosenthal@minterellison.com>
Cc: Andrew Riordan <andrew.riordan@nortonrosefulbright.com>; Guru Kugananthan <guru.kugananthan@nortonrosefulbright.com>; Joely Wilkinson-Hayes <Joely.Wilkinson-Hayes@dlapiper.com>; Georgina Adams <gadams@ama.com.au>; Daniel Preston <daniel.preston@vicbar.com.au>; Nick Kotzman <nick.kotzman@vicbar.com.au>; Geoff Carter <Geoff.Carter@minterellison.com>; Noelia Boscana <Noelia.Boscana@minterellison.com>; Alix Friedman <Alix.Friedman@minterellison.com>
Subject: RE: ACT 4 and 5 of 2021 - Re Authorisation AA1000542 Determination - settlement deed [ME-ME.FID6495601] (4046201)[NRF-APAC.FID3010063]

Dear Kelvin,

Can you please explain the purpose of this call and what role the ACCC considers it may have in the resolution of this matter.

Thanks

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From: Kelvin Ng <kelvin.ng@nortonrosefulbright.com>
Sent: Friday, July 15, 2022 4:09:35 PM
To: Adelaide Rosenthal <Adelaide.Rosenthal@minterellison.com>
Cc: Andrew Riordan <andrew.riordan@nortonrosefulbright.com>; Guru Kugananthan <guru.kugananthan@nortonrosefulbright.com>; Simon Uthmeyer <Simon.Uthmeyer@dlapiper.com>; Joely Wilkinson-Hayes <Joely.Wilkinson-Hayes@dlapiper.com>; Georgina Adams <gadams@ama.com.au>; Daniel Preston <daniel.preston@vicbar.com.au>; Nick Kotzman <nick.kotzman@vicbar.com.au>; Geoff Carter <Geoff.Carter@minterellison.com>; Noelia Boscana <Noelia.Boscana@minterellison.com>; Alix Friedman <Alix.Friedman@minterellison.com>
Subject: RE: ACT 4 and 5 of 2021 - Re Authorisation AA1000542 Determination - settlement deed [ME-ME.FID6495601] (4046201)[NRF-APAC.FID3010064]

****EXTERNAL****

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Subject: ACT 4 and 5 of 2021 - Re Authorisation AA1000542 Determination - settlement deed [ME-ME.FID6495601] (4046201)[NRF-APAC.FID3010067]

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We note it is presently the parties' intention to exchange executed counterparts on Monday.

Please let us know if you wish to discuss any aspect of the Deed further before then and we can arrange a call.

Regards
Adelaide

Adelaide Rosenthal
Senior Associate
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VACCINATED WORKPLACE

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OTHER MATTERS

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